

By: West

S.B. No. 1630

A BILL TO BE ENTITLED

AN ACT

relating to the protection of defendants against vexatious litigants.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivision (5), Section 11.001, Civil Practice and Remedies Code, is amended to read as follows:

(5) "Plaintiff" means an individual who commences or maintains a litigation pro se.

SECTION 2. Subchapter A, Chapter 11, Civil Practice and Remedies Code, is amended by adding Section 11.002 to read as follows:

Sec. 11.002. APPLICABILITY. (a) This chapter does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se.

(b) This chapter does not apply to a municipal court.

SECTION 3. Section 11.054, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT. A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under

1 Section 11.051, has commenced, prosecuted, or maintained [~~in~~
2 ~~propria persona~~] at least five litigations as a pro se litigant
3 other than in a small claims court that have been:

4 (A) finally determined adversely to the
5 plaintiff;

6 (B) permitted to remain pending at least two
7 years without having been brought to trial or hearing; or

8 (C) determined by a trial or appellate court to
9 be frivolous or groundless under state or federal laws or rules of
10 procedure;

11 (2) after a litigation has been finally determined
12 against the plaintiff, the plaintiff repeatedly relitigates or
13 attempts to relitigate, pro se [~~in propria persona~~], either:

14 (A) the validity of the determination against the
15 same defendant as to whom the litigation was finally determined; or

16 (B) the cause of action, claim, controversy, or
17 any of the issues of fact or law determined or concluded by the
18 final determination against the same defendant as to whom the
19 litigation was finally determined; or

20 (3) the plaintiff has previously been declared to be a
21 vexatious litigant by a state or federal court in an action or
22 proceeding based on the same or substantially similar facts,
23 transition, or occurrence.

24 SECTION 4. Section 11.101, Civil Practice and Remedies
25 Code, is amended by amending Subsection (a) and adding Subsections
26 (d) and (e) to read as follows:

27 (a) A court may, on its own motion or the motion of any

1 party, enter an order prohibiting a person from filing, pro se [~~in~~
2 ~~propria persona~~], a new litigation in a court to which the order
3 applies under this section without permission of the appropriate
4 local administrative judge described by Section 11.102(a) to file
5 the litigation [~~in this state~~] if the court finds, after notice and
6 hearing as provided by Subchapter B, that[+]

7 [~~(1)~~] the person is a vexatious litigant[~~, and~~
8 [~~(2)~~ ~~the local administrative judge of the court in~~
9 ~~which the person intends to file the litigation has not granted~~
10 ~~permission to the person under Section 11.102 to file the~~
11 ~~litigation~~].

12 (d) A prefiling order entered under Subsection (a) by a
13 justice or constitutional county court applies only to the court
14 that entered the order.

15 (e) A prefiling order entered under Subsection (a) by a
16 district or statutory county court applies to each court in this
17 state.

18 SECTION 5. Section 11.102, Civil Practice and Remedies
19 Code, is amended to read as follows:

20 Sec. 11.102. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE.
21 (a) A vexatious litigant subject to a prefiling order under
22 Section 11.101 is prohibited from filing, pro se, new litigation in
23 a court to which the order applies without seeking the permission
24 of:

25 (1) the local administrative judge of the type of
26 court in which the vexatious litigant intends to file, except as
27 provided by Subdivision (2); or

1 (2) the local administrative district judge of the
2 county in which the vexatious litigant intends to file if the
3 litigant intends to file in a justice or constitutional county
4 court.

5 (b) A vexatious litigant subject to a prefiling order under
6 Section 11.101 who files a request seeking permission to file a
7 litigation shall provide a copy of the request to all defendants
8 named in the proposed litigation.

9 (c) The appropriate local administrative judge described by
10 Subsection (a) may make a determination on the request with or
11 without a hearing. If the judge determines that a hearing is
12 necessary, the judge may require that the vexatious litigant filing
13 a request under Subsection (b) provide notice of the hearing to all
14 defendants named in the proposed litigation.

15 (d) The appropriate [A] local administrative judge
16 described by Subsection (a) may grant permission to a [person found
17 to be a] vexatious litigant subject to a prefiling order under
18 Section 11.101 to file a litigation only if it appears to the judge
19 that the litigation:

20 (1) has merit; and

21 (2) has not been filed for the purposes of harassment
22 or delay.

23 (e) [~~(b)~~] The appropriate local administrative judge
24 described by Subsection (a) may condition permission on the
25 furnishing of security for the benefit of the defendant as provided
26 in Subchapter B.

27 (f) [~~(c)~~] A decision of the appropriate [a] local

1 administrative judge described by Subsection (a) denying a litigant
 2 permission to file a litigation under Subsection (d) [~~(a)~~], or
 3 conditioning permission to file a litigation on the furnishing of
 4 security under Subsection (e) [~~(b)~~], is not grounds for appeal,
 5 except that the litigant may apply for a writ of mandamus with the
 6 court of appeals not later than the 30th day after the date of the
 7 decision. The denial of a writ of mandamus by the court of appeals is
 8 not grounds for appeal to the supreme court or court of criminal appeals.

9 SECTION 6. The heading to Section 11.103, Civil Practice
 10 and Remedies Code, is amended to read as follows:

11 Sec. 11.103. DUTIES OF CLERK[~~, MISTAKEN FILING~~].

12 SECTION 7. Subsections (a), (c), and (d), Section 11.103,
 13 Civil Practice and Remedies Code, are amended to read as follows:

14 (a) Except as provided by Subsection (d), a clerk of a court
 15 may not file a litigation, original proceeding, appeal, or other
 16 claim presented, pro se, by a vexatious litigant subject to a
 17 prefiling order under Section 11.101 unless the litigant obtains an
 18 order from the appropriate local administrative judge described by
 19 Section 11.102(a) permitting the filing.

20 (c) If the appropriate local administrative judge described
 21 by Section 11.102(a) issues an order permitting the filing of the
 22 litigation [~~under Subsection (b)~~], the litigation remains stayed
 23 and the defendant need not plead until the 10th day after the date
 24 the defendant is served with a copy of the order.

25 (d) A clerk of a court of appeals may file an appeal from a
 26 prefiling order entered under Section 11.101 designating a person a
 27 vexatious litigant or a timely filed writ of mandamus under Section

1 11.102 [~~11.102(c)~~].

2 SECTION 8. Subchapter C, Chapter 11, Civil Practice and
3 Remedies Code, is amended by adding Section 11.1035 to read as
4 follows:

5 Sec. 11.1035. MISTAKEN FILING. (a) If the clerk
6 mistakenly files litigation presented, pro se, by a vexatious
7 litigant subject to a prefiling order under Section 11.101 without
8 an order from the appropriate local administrative judge described
9 by Section 11.102(a), any party may file with the clerk and serve on
10 the plaintiff and the other parties to the litigation a notice
11 stating that the plaintiff is a vexatious litigant required to
12 obtain permission under Section 11.102 to file litigation.

13 (b) Not later than the 24th hour after receiving notice that
14 a vexatious litigant subject to a prefiling order under Section
15 11.101 has filed, pro se, litigation without obtaining an order
16 from the appropriate local administrative judge described by
17 Section 11.102(a), the clerk shall notify the court that the
18 litigation was mistakenly filed. On receiving notice from the
19 clerk, the court shall immediately stay the litigation and shall
20 dismiss the litigation unless the plaintiff, not later than the
21 10th day after the date the notice is filed, obtains an order from
22 the appropriate local administrative judge described by Section
23 11.102(a) permitting the filing of the litigation.

24 (c) An order dismissing litigation that was mistakenly
25 filed by a clerk may not be appealed.

26 SECTION 9. Section 11.104, Civil Practice and Remedies
27 Code, is amended by adding Subsection (c) to read as follows:

1 (c) The Office of Court Administration of the Texas Judicial
2 System may not remove the name of a vexatious litigant subject to a
3 prefiling order under Section 11.101 from the agency's Internet
4 website unless the office receives a written order from the court
5 that entered the prefiling order or from an appellate court. An
6 order of removal affects only a prefiling order entered under
7 Section 11.101 by the same court. A court of appeals decision
8 reversing a prefiling order entered under Section 11.101 affects
9 only the validity of an order entered by the reversed court.

10 SECTION 10. Subdivision (3), Section 11.001, and Subsection
11 (b), Section 11.103, Civil Practice and Remedies Code, are
12 repealed.

13 SECTION 11. The change in law made by this Act applies only
14 to an action commencing on or after the effective date of this Act.
15 An action commencing before the effective date of this Act is
16 governed by the law as it existed on the date when the action
17 commenced, and that law is continued in effect for that purpose.

18 SECTION 12. This Act takes effect September 1, 2013.